loss of expectation of life, and for special damages, from the date of the issue of the writ, 7 September 1983. Interest should be calculated at 3% pa on the amount of damages for pre-trial loss of support from the date of the accident, 17 March 1981.

As the dependants are also the same beneficiaries of the estate, the awards to them as dependants will be reduced in each case by the respective amounts received through the estate as beneficiaries. The special damages should be paid to the widow. For the purpose of complying with s 12(4) of the Civil Law Act, the damages awarded in respect of the dependants' claim should be divided as to two-thirds to the widow and as to one-sixth to each of the two children, for whom the widow rather than the Public Trustee shall hold in trust.

There will also be an order as to the costs of the plaintiffs to be paid by the first and third defendants.

Summary of Damages

Estate's claim	$
Loss of expectation of life	7,000
Lost years' earnings	215,000
Special Damages	
Funeral expenses, damage to motor car and vehicle inspection report fee (agreed)	7,000
Dependants' claim	
Pre-trial loss of support at $1,000 per month × 117	117,000
Future loss of support at $1,500 per month × 7 years	126,000

Order accordingly.

Solicitors: *Murphy & Dunbar; TS Tan; Yeo Kee Chin & Co.*

Reported by *Azra Moiz*

MALAYSIAN REPORTS

Syarikat M Mohamed v Mahindapal Singh & Ors

HIGH COURT (KANGAR) — CIVIL SUIT NO 22-23-1988
KC VOHRAH J
9 JANUARY 1991

Civil Procedure — Order of committal — Breach of injunction — Motion for contempt of court — Need to comply with procedural rules — Rules of the High Court 1980, O 52

The plaintiffs applied by motion for an order to commit the first and second defendants to prison for contempt of court for breach of injunction. In the statement accompanying the notice of motion the plaintiffs simply set out that the defendants had failed to disclose the assets of their firm.

Held, dismissing the plaintiffs' motion:

(1) The grounds on which an order of committal is sought must be set out in the statement accompanying the notice of motion. This information must be set out with sufficient particularity to enable the person alleged to be in contempt to meet the charge. Since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, these procedural rules must be complied with and be strictly enforced.

(2) The plaintiffs' statement in the notice of motion did not contain sufficient information as to what the alleged breach was about.

(3) Although the plaintiffs had set out the full facts in the affidavit of Moiz Tahir Ali, this was a wholly separate document and could not supply the missing grounds which were required to be set out in the statement.

[Bahasa Malaysia summary

Plaintif telah memohon menerusi usul perintah pengkomitan terhadap defendan pertama dan kedua kerana menghina mahkamah dengan mengingkari injunksi. Dalam pernyataan yang dikemukakan bersama notis usul itu, plaintif hanya menyatakan bahawa defendan telah gagal mendedahkan aset firma mereka.

Diputuskan, menolak usul plaintif itu:

(1) Alasan-alasan atas mana perintah pengkomitan dipohon mesti dinyatakan dalam pernyataan yang dikemukakan bersama notis usul. Informasi ini mesti dinyatakan dengan cukup terperinci untuk membolehkan orang yang didakwa menghina mahkamah membela dakwaan itu. Memandangkan yang prosiding pengkomitan berupa quasi-jenayah dan melibatkan kebebasan seseorang, aturan-aturan prosedur mesti diikuti dan dikuatkuasakan dengan tegas.

(2) Pernyataan plaintif di dalam notis usul tidak meliputi informasi yang cukup tentang keingkaran yang didakwa itu.

(3) Walaupun plaintiff telah menyatakan fakta yang penuh di dalam afidavit Moiz Tahir Ali, ini adalah satu dokumen yang berasingan dan ia tidak boleh memberikan alasan-alasan yang tidak wujud yang wajib dinyatakan di dalam pernyataan itu.]

Cases referred to

1 *Chanel Ltd* v *FGM Cosmetics* [1981] FSR 471 (refd)
2 *Chiltern District Council* v *Keane* [1985] 2 All ER 118 (folld)
3 *Harmsworth* v *Harmsworth* [1987] 3 All ER 816 (refd)

Legislation referred to
Rules of the High Court 1980 O 52
Rules of the Supreme Court [UK] O 52

RC Murugeson for the plaintiffs.
Choe Kuan Him for the defendants.

Cur Adv Vult

KC Vohrah J: The motion before me is to commit the first and second defendants, partners of Syarikat Pal Bersaudara, to prison for contempt of court for 'breach of injunction' made on 8 October 1988 by the order of Lim Beng Choon J. Since I would be referring to the contents of the notice later and since the notice has been attacked as being defective for its failure on its face to specify the precise breaches of the injunction, the notice of motion, so far as relevant, is reproduced below:

> Take notice that pursuant to the leave of this Honourable Court given on the 22nd day of April 1989, this honourable court will be moved . . . for an order that Mahindapal Singh s/o Joginder Singh and Dhrampal Singh s/o Joginder Singh being partners of Syarikat Pal Bersaudara be committed to prison for their contempt of Court in that the said Mahindapal Singh s/o Joginder Singh and Dhrampal Singh s/o Joginder Singh personally being in breach of injunction made by the order of the Honourable Mr Justice Lim Beng Choon dated 8 October 1988 whereunder the defendants abovenamed were ordered to:
>
> > 'and each of them do within seven (7) days of the service of this order upon them make and serve on the plaintiffs' solicitor an affidavit disclosing the full value of their assets whether within or without the jurisdiction of this Court, identifying with full particularity the nature of all such assets and their whereabout and whether the same be held in their own names or held jointly or held by nominees otherwise on their behalf or/on behalf of any of them and without prejudice to the generality of the foregoing specifying:
> >
> > (i) the identity of all other banks and other accounts in their sole names or jointly held or held by nominees or otherwise on their behalf and the sums standing to their credit in such accounts;
> > (ii) any rural property or their assets money or goods owned by them or any of them and the whereabout of the same and the names and addresses of all persons who have or may have possession, custody or control of any such assets, money or goods at the date of the service of this order'
>
> upon the grounds set forth in the copy statement (sic) served herewith used on the application for leave to issue this notice of motion.

The notice of motion also contains a statement that in support of the motion it was intended to read and use the affidavit of Moiz Tahir Ali (the managing partner of the plaintiffs).

It is not disputed that both the first and second defendants were served with the notice of motion, a copy of the statement made pursuant to O 52 r 2 of the Rules of the High Court 1980 ('RHC') and the affidavit of Moiz Tahir Ali.

Counsel for the first and second defendants argued that since the notice of motion itself did not specify the breaches of the injunction the court should refuse to make an order of committal and he relies on *Chanel Ltd* v *FGM Cosmetics*.[1] In that case Whitford J refused to make an order of committal as he held the notice of motion for committal before him to be bad because it had failed on its face to specify the precise breaches of the undertaking of which the plaintiffs complained and he also held that it was not sufficient that these breaches were made plain in the affidavits served in the case and in a previous action.

While there is no specific reference in that judgment as to whether the notice of motion was filed under r 3 or r 4 of O 52 of the English Rules of the Supreme Court ('RSC') it seems clear that since the case was not heard in the divisional court it was filed under r 4. There is no equivalent Malaysian rule and I will advert to this later in my judgment.

So far as r 4 of O 52 of the English RSC is concerned a more authoritative decision is the Court of Appeal case of *Chiltern District Council* v *Keane*.[2] There Sir John Donaldson MR at p 119 highlighted the need for procedural rules to be strictly complied with where the liberty of the subject is involved:

> I have said sufficient, I think, to make it clear that if ever there was an appeal which, totally lacked the ingredient of merit, it is this one, and counsel for Mr Keane of course has not suggested the contrary. However, where the liberty of the subject is involved this court has time and time again asserted that procedural rules must be strictly complied with.

His Lordship then referred to paras (2) and (3) of O 52 r 4 of the RSC of which read:

> (2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.
>
> (3) Without prejudice to its power under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

His Lordship continued:

> The notice of motion was personally served on Mr Keane, but it only stated the grounds of the application to commit in general terms. It recited the undertaking and the injunction, and then alleged that there had been a breach. This, on the authorities, is not sufficient. It has been said in many cases that what is required is that the person alleged to be in contempt shall know, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court.

> The particular undertakings and injunctions in this case cover a wide range of activities. Mr Keane was entitled to know whether it was said by the council that he was in breach of every single requirement of those orders or only some, and if so which, of them and the notice failed to give him that information.
>
> Every notice of application to commit must be looked at against its own background. The test, as I have said, is: does it give the person alleged to be in contempt enough information to enable him to meet the charge? If, for example, a defendant is subject to an injunction to leave a stated house not later than a particular time on a particular day, then it would be sufficient to say that he had failed to comply with that order, because it only permits of one breach, namely failure to leave the house by the time stated. But where the order is not in such a simple form and it is possible for the defendant to be in doubt what breach is alleged, then the notice is defective.

In a recent Court of Appeal case *Harmsworth* v *Harmsworth*,[3] Nicholls LJ at p 821 referred to the above passage and stressed the need for certain basic information, enough information with sufficiently particularly, to appear within the notice of motion (including any addendum forming part of the notice) to enable the person alleged to be in contempt to meet the charge. His Lordship also underscored the principle that deficiencies in the notice of motion cannot be regarded as cured by reason of references in the notice of motion to affidavits attached to or accompanying the notice. His Lordship said:

> So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In satisfying this test it is clear that in a suitable case if lengthy particulars are needed they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the rules of court and as I understand the decision in the *Chiltern* case the rules require that the notice itself must contain certain basic information. That information is required to be available to the respondent to the application from within the four corners of the notice itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged. A fortiori, in my view, where the document referred to is an affidavit, which does not set out particulars in an itemised form, but which leaves the respondent to the committal application to extract and cull for himself from a historical narrative in the affidavit relevant dates and times and so forth, and to work out for himself the precise number of breaches being alleged and the occasions on which they took place.
>
> I do not think, therefore, that if there are deficiencies in the notice issued on 22 June, these deficiencies should be regarded as having been cured by reason of the references in para 1 to the affidavit attached to the notice and in para 2, to the affidavit accompanying the notice.

As I have stated earlier the cases I have cited have dealt with O 52 r 4 of the English RSC to which there is no Malaysian equivalent. The rule in the Malaysian RHC as regards an application for an order of committal is O 52 r 3 which is substantially similar to r 3 of O 52 of the English RSC in relation to an application for an order of committal to be made to a Divisional Court.

The application under O 52 r 3 of the RHC (O 52 r 3 of the English RSC) can only be made after leave has been granted under r 2 and the application, under r 2(2) (equivalent to r 2(2) of O 52 of the English RSC) for such leave, must be made ex parte to the court and must be supported by a statement and an affidavit.

The statement that is required to be filed has to set out the name, description and address of the person sought '*and the grounds on which his committal is sought*'. (emphasis mine). As for the affidavit it is to verify the facts relied on.

I now come to r 3(3) (equivalent to r 3(3) of O 52 of the English RSC) which reads:

> Subject to paragraph (4), the notice of motion accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

Paragraph 4, referred to above, gives the court power to dispense with service of the motion if it is just to do so and is not relevant here.

It will be noticed that unlike r 4(2) of O 52 of the English RSC which requires, as discussed earlier, the notice of motion that has to be served to state the grounds of the application, the requirement in rr 2(2) and 3(3) (RHC and also English RSC) is for the statement accompanying the notice of motion to state the grounds on which an order of committal is sought against the person. In other words the grounds for which an order of committal is sought appear not in the notice of motion but in the accompanying statement.

Thus, although there is no requirement for the notice of motion to set out the grounds there is such a requirement in respect of the statement. And in my view the principles and the reasoning underlying the need for the notice of motion under O 52 r 4 of the English RSC (which does not require an accompanying statement) to contain enough information with sufficient particularity to enable the person alleged to be in contempt to meet the charge must apply to the need for the statement required under O 52 r 2(2) and 3(3) of our RHC to contain such information; for at the root of the matter is this — that since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, the procedural rules applicable must be strictly enforced.

In the present motion the statement accompanying the notice of motion does not contain sufficient information as to what the alleged breach is all about. It gives 'the grounds of the application' as:

That the aforesaid Mahindapal Singh s/o Joginder Singh and Dhrampal Singh s/o Joginder Singh being partners of Syarikat Pal Bersaudara and directors of the third defendants abovenamed respectively and being in breach of the injunction made by the order of the Honourable Justice Mr Lim Beng Choon dated the 8th day of October 1988 whereunder they failed to disclose the assets of their firm of Syarikat Pal Bersaudara

and that the abovenamed first and second defendants or any one of them have not complied with the said order in the manner aforesaid since the date of personal service of the said order on the first and second defendants on 12 October 1988.

What are the breaches alleged? There is merely a general statement that the first and second defendants have failed to disclose the assets of their firm of Syarikat Pal Bersaudara. According to the terms of the order the first two and the third defendants had to swear an affidavit by a certain date disclosing various particulars (spelt out in some detail in the order which has been set out in the first paragraph of this judgment) concerning their assets. The defendants are entitled to know what it is that they have breached.

Which term of the many terms in the order have they breached? Is it that they have not disclosed all their assets? Or that they have not disclosed the value of the assets? Or that they have not disclosed their full value? Or that they have not specified the nature of the assets? Or that the nature of the ownership of the assets have not been set out? Or that the identity of the banks in which their accounts were kept have not been disclosed? And there are other questions which can be asked by the defendants who need to know with particularity what charge or charges they are faced with, charges which can land them in prison. No doubt the notice of motion has made reference to the affidavit of Moiz Tahir Ali and the affidavit has been served on the defendants but the point is that the document is a wholly separate document from the notice and the statement and its purpose is merely to verify the facts in the statement; it cannot supply the missing grounds which are required to be set out in the statement under r 2(2) of O 52 of the RHC.

In view of the foregoing I cannot make an order on the committal proceedings. The motion is dismissed with costs.

Motion dismissed.

Solicitors: *RC Murugeson; Syarikat Choe.*

Reported by *Mathavan Devadas*

Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Anor

HIGH COURT (PENANG) — ORIGINATING MOTION NO 32-5-1985
EDGAR JOSEPH JR J
10 DECEMBER 1990

Administrative Law — Certiorari — Application for leave to commence certiorari proceedings — No real injustice suffered — Leave refused

Labour Law — Period of shutdown — Employees' entitlement to full wages for Sundays and public holidays — Whether employees entitled to such under collective agreement, statute, industrial law and common law

Administrative Law — Jurisdiction — Industrial Court finding that there was lacuna in the law — Whether Industrial Court had committed error within jurisdiction in making such conclusion

The Industrial Court had awarded full wages for Sundays and public holidays during the applicant's period of shutdown, which was caused by a fall of orders. The main issue was whether there was a legal basis for the Industrial Court to have made the award. The applicant company, in its application for certiorari to quash the award, argued that there was no legal basis.

Held, dismissing the application:

(1) The company, when applying for leave to commence certiorari proceedings, had not disclosed that the relevant contract of service provided for the payment of full wages for weekdays falling within the period of shutdown, so that it really benefitted from the award taken as a whole. The company had not therefore suffered any injustice by reason of the award. The court therefore exercised its discretion to refuse certiorari.

(2) The collective agreement provides for the payment of a fixed rate of monthly wages, regardless of the availability of work. It also specifically provided for the payment of reduced wages where the company is unable to provide work when production is stopped under certain circumstances. As the terms and conditions of employment are governed by the collective agreement and there was no provision empowering the company to reduce the wages of employees on the ground that no work is available as a result of a fall in orders, the award had a legal basis in contract.

(3) The Employment Act 1955 has no provision authorizing an employer to make any deduction from wages for periods of shutdown. Any such deduction would therefore be illegal.

(4) Under the employees' contract of service, their remuneration is not dependent upon their employers providing work. Further, reg 5 of the Employment (Termination and Lay-Off Benefits) Regulations 1980, obliges the company to pay its employees full wages even for days when the company is unable to provide work.

(5) Under industrial law, employees were entitled to keep their salaries in full during periods of cut back in production when no work is done at all, if there is no provision in the collective agreement for part payment of salary or salary deduction during periods of temporary lay-off. There is no difference between deduction of wages and non-payment of wages, and the principle in the *Dunlop Malaysian Industries Bhd* case[10] applies to this case.